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# EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS: NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS

Written statement submitted by Franciscans International, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 1999]

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* Translation supplied by the submitting organization.

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## The way of acting of the public system in charge of the protection of human rights in Mexico: the mask of impunity

1. Franciscans International and Dominicans in cooperation with the Francisco de Vitoria OP Human Rights Centre of Mexico, wish to bring to the attention of the United Nations Commission on Human Rights the situation of human rights in Mexico. Our document will focus on the role and activities of the National Commission of Human Rights of Mexico and the 32 State Commissions of Human Rights in the country. The document is based on the research and permanent work of the Francisco de Vitoria OP Human Rights Centre.

2. The National Commission of Human Rights of Mexico was created by a presidential decree in 1990 as a decentralized body of the "Secretariat de Gobernacion" (Minister of the Interior) by the Mexican Government. Two years later, the Commission was given autonomy and its own resources. Similar bodies were established in 32 federal states of Mexico.

3. Until now, the head of the National Commission on Human Rights has been appointed by the President of the Republic and the heads of the State bodies are appointed by State governors. In practice, this deprives the various bodies of the independence required to accomplish functions which are appropriate to an ombudsman. Under the present system, the appointment of the President of the Commission is made by the President of the Republic with the approval of the Senate or the Permanent Commission of Congress, if the former is not in session. It should be noted that the political party PRI (Institutional Revolutionary Party) has held a majority in the Senate for the past six decades and is also the Party in power in Mexico and there is no doubt that the decision of the Executive Branch is decisive in this matter.

4. Different bodies of civil society and of recognized political parties have taken part in consultative fora before the reform put forward by the Commission. As of January 1999, the reform initiative is still being reviewed by ad hoc Commissions of the Chamber of Deputies. It would seem evident that the reforms of article 102b of the statutes of the National Human Rights Commission represent an important step forward in strengthening the non-legal system of protection of human rights. However, the experience of NGOs with the State Commissions has shown that the formal dependence of these bodies on the Executive power of government is far from being the only problem. Since the procedures in place give priority in practice to information obtained from the authorities and also minimizes the import of complaints received, the authorities in charge for protecting human rights in Mexico have often guaranteed the impunity of the perpetrators of violations.

5. As opposed to other intergovernmental human rights bodies, the investigations conducted by the National Human Rights Commission places the burden of proof on the complainant rather than on the particular authority identified as responsible for the action. The Francisco de Vitoria Human Rights Centre in Mexico has done an inventory of cases which found against the victims because the victims could not provide other elements than those mentioned when the complaint was made.

6. Investigations conducted by the Commission are limited in most cases to requesting information from the concerned public authorities. When responses are received from them, the files are dealt with by producing documents of non-responsibility. Since the procedure does not attempt to establish the truth and the coherence of the testimonies of the complainants, many cases remain unpunished. On the other hand, the mandate of the Commission is not aimed at investigating systematically all human rights violations, but only at punishing public agents who are directly and materially responsible for the facts. The absence of any attempt to prosecute those who ordered or promote illegal acts allows the perpetrators to continue acting with impunity. This was the case in the situation of forced disappearances and arbitrary detentions linked to the insurrection and conflict in the states of Guerrero and Oaxaca.

7. The preventive measures do not benefit from an appropriate follow-up and, in many cases, there is no follow-up at all. The efficiency of such measures is so reduced causing new violations of the rights of the "protected persons" left without defence.

8. In the context of these procedures, the Commission promotes amicable conciliation to settle some cases. These cases are often resolved without the knowledge nor the agreement of the complainant. In addition the conditions of settlement are negotiated directly between the staff of the Commission and the responsible authorities (mainly when the army is involved), without the knowledge of the complainant and/or the victims or without having notified them beforehand.

9. The limitations on the Commission's right to intervene in legal proceedings prevent it from overseeing the respect of the guarantees of a fair trial, thereby leaving the accused without defence. In addition, the recommendations made by the Commission generally consist in a request for preliminary investigations. This results in those alleged responsible for the violations being set free during the trial, thereby allowing impunity to prevail.

10. As a national body, the Commission must deal with all cases concerning the federal army. Article 13 of the Commission's Statutes declares clearly that in the cases where civilians are involved, the civil authorities have the competence to judge the affair. In spite of this article, the Commission has sent to the Bureau of the Attorney-General of the Military Justice recommendations which resulted in the latter investigating crimes presumably committed by civilians rather than sending them to the Attorney-General of the Republic.

11. In addition, we are aware that the Commission has provided military authorities with detailed information on the complainants in order to facilitate the procedures. This means that the Commission has taken on the role of a simple bureau and did not conduct its own investigation. Besides the risks which this represents for the complainants, this manner of proceeding discourages and often dissuades potential complainants and/or victims, especially as they will be interrogated by their aggressors. The

major deficiencies and flaws of the Commission relate to cases involving the military. The lack of openness and the blindness which is characteristic of the army constitute a stumbling block which the ombudsman does not want to deal with. It has also on many occasions allowed total immunity, a situation which can be traced back to the silence of the public system of protection.

12. Although there are presently local commissions in all States of the Federal Republic, it is worth noting that there are considerable differences between the National commission of Human Rights and the State Commissions in terms of budget, infrastructure and human resources. The Francisco de Vitoria Human Rights Centre in Mexico has noted that there is great mistrust on the part of citizens regarding the effectiveness of the work of Commissions as there are doubts about the independence and autonomy of its members. Many irregularities have taken place and have been recognized and documented. The moral authority of the ombudsman is the only instrument to punish and prevent impunity. Regretfully, the presidency of the State Commissions is often used as a political tool or as an instrument of the Executive of State governments. This leads to considerably limiting the effectiveness of Commissions and negating the confidence which citizens have in their work. Nevertheless, public pressure which is generated by the publication of the Commissions' recommendations puts pressure on responsible authorities to implement them. However, it has been established in many instances that the Commissions frequently use their discretionary power which allows them to keep their recommendations under wrap. This prevents the full implementation of recommendations and thereby sabotages the work of the ombudsman.

13. The office of the national ombudsman is systematically used by the Government of Mexico to demonstrate to the international community the effectiveness of the protection of human rights in the country. Since this is the case, then the work of the ombudsman is far from achieving its goal. In fact, the ombudsman's role consists more in opposing the complainants by placing many obstacles before them in their quest for justice. One of the main obstacles consists in requiring complainants to provide information themselves which, in most cases, they cannot collect, rather than using his own authority and the means at his disposal to conduct investigations. Another obstacle is that amicable resolutions of cases and recommendations themselves are negotiated with those authorities responsible for the violations. Moreover, in view of the dependence of judicial power on Executive authority which flows from the political use of law which prevails in Mexico, the cases of violations of the right to a fair trial are among the most widespread. However, since the Commission does not have the possibility to know the issues of fact in legal proceedings, the Commission has no jurisdiction over the violations. Finally, there is no follow-up to the recommendations made by the National Commission on Human Rights. The Commission may consider that it has totally implemented its recommendations when it has opened preliminary investigations against the accused. However, this is not the same as demanding sanctions when illegal acts have been committed.

14. Therefore, we urge:

(a) That the United Nations Commission on Human Rights recommend to the Government of Mexico to accept the offer of technical advisory services

from the Office of the United Nations High Commissioner for Human Rights and that, as part of this, to revise the internal procedures of the National Human Rights Commission of Mexico to bring it into line with the international standards and practices of the Human Rights Committee of the United Nations which oversees the follow-up to the International Covenant on Civil and Political Rights.

(b) That the United Nations Commission on Human Rights urge the Government of Mexico to bring its legislation into line with international human rights instruments so that the classification of human rights violations and offences in Mexican law is consistent with these instruments.

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